

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 N. Capitol Street, NE, Suite 9100
Washington, DC 20002

FIFTH STREET, LLC
Petitioner

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS
Respondent

Case No.: CR-C-07-100061

**ORDER DENYING MOTION TO DISMISS
AND ORDER GRANTING STATUS CONFERENCE**

I. Introduction

Currently pending before this administrative court is the Government's Motion to Dismiss the herein action for mootness. The Petitioner has filed its opposition, and the motion is now ripe for review. The Government's motion is denied for the following reasons.

Pursuant to Section 6(b) of the Office of Administrative Hearings Establishment Act of 2001, as amended, D.C. Official Code §§ 2-1831.01 *et seq.*, on October 1, 2004, this administrative court began to hear adjudicated cases formerly heard by the District of Columbia's Board of Appeals and Review. D. C. Official Code § 2-1831.03(a)(3).

On May 18, 2007, Petitioner filed a Petition for Expedited Hearing, which appears to relate to several Stop Work Orders issued by DCRA against the Petitioner, Fifth Street, LLC pertaining to property at 1130 and 1132 Fifth Street, N.W. (the "Property"). The Petitioner seeks an expedited hearing pursuant to 1 DCMR 2805.

On June 4, 2007, the Government filed a Motion to Dismiss, alleging the Stop Work Order it issued on September 20, 2006 was rescinded and removed on April 9, 2007. On June 15, 2007, the Petitioner filed its opposition to the Motion to Dismiss, alleging that two more Stop Work Orders have since been issued addressing the same or similar issues.

II. Procedural History

On September 20, 2006, DCRA Inspector Juan Scott issued a Stop Work Order with respect to construction occurring at the Property, alleging, *inter alia*, the Petitioner was working outside the scope of its permit to build new three-story additions. Respondent's Exhibit "RX" 1 attached to its Motion to Dismiss. On April 9, 2007, the Government rescinded and removed the September 20, 2006 Stop Work Order by letter.

On April 9, 2007, the Government posted the second Stop Work Order alleging the Petitioner failed to obtain the required permits as it pertains to the same Property. RX 2.

On April 23, 2007, the Petitioner appealed the April 9, 2007 second Stop Work Order. Based on that appeal, the Government removed the April 9, 2007 second Stop Work Order.

On May 4, 2007, three new Stop Work Orders had been posted on the Property, alleging, *inter alia*, the Petitioner failed to obtain the required permits and to submit amendments to Plans. Petitioner's Exhibit "PX" A, attached to its Opposition to the Government's Motion to Dismiss.

III. Discussion

The Government's Motion to Dismiss is denied because the United States Supreme Court has identified an exception to the mootness doctrine for issues that are "capable of repetition, yet evading review." *See In re: Eric Barlow* 634 A.2d 1246 (D.C. App. 1993), *citing Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515, 55 L. Ed. 310, 31 S.Ct. 279 (1911). The Supreme Court further defined this category of cases in *Weinstein v. Bradford*, 423 U.S. 148, 46

L.Ed. 2d 350, 96 S.Ct. 347 (1975), stating that, absent a class action, the following two-pronged test must be met: “(1) challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.” *Id* at 149 (citing *Sosna v. Iowa*, 419 U.S. 383, 42 L. ed. 2d 5322, 95 S. Ct. 553 (1975)).

In the instant case, the two-prong test has been met because the challenged action, which is the validity of the first two Stop Work Orders was too short to be fully litigated prior to its rescission. Once the first Stop Work Order was rescinded on April 9, 2007, the Government issued a second Stop Work Order on April 9, 2007. Then three Stop Work Orders were issued pertaining to similar actions on May 3, 2007, after the Petitioner appealed the second Stop Work Order on April 23, 2007. In addressing the second prong, it is obvious that the Petitioner is being subjected to the same action repeatedly. *Id.*

Even if we assume for purposes of argument that the second prong had not been met, we would still follow the D. C. Court of Appeals’ prior decision on this same issue of mootness, and conclude that Petitioner’s request for an expedited hearing is not moot simply because the first two Stop Work Orders were rescinded. As the D. C. Court of Appeals opined in *In re: Barlow, supra*, “this court has ‘declined to adhere strictly to the requirements set forth in *Weinstein*.’ *In re W. L.*, 603 A.2d 839, 841 (D.C. 1991)...Thus, the presence of the short duration prong alone, and appellant’s attendant inability to litigate his or her claims before expiration of the challenged action, is sufficient to warrant disposition of the issue on the merits. *In re: Barlow, supra, at 1249.*

Accordingly, this administrative court is interested in judicial economy and the prompt administration of justice. As such, there is no useful purpose in continuously delaying the

adjudication of the contested stop work orders. The Government's Motion to Dismiss on the ground of mootness is denied, and a status conference is ordered to schedule an evidentiary hearing expeditiously.

IV. Order

Therefore, based upon the entire record in this matter, it is, this 19th day of June, 2007

ORDERED, that the Government's Motion to Dismiss is **DENIED**; and it is further

ORDERED, that the parties and any counsel shall appear for a status conference at the Office of Administrative Hearings, 941 N. Capitol Street, NE, Suite 9100, Washington, DC, on _____, 2007 at PM. The parties shall bring their calendars with them to the status conference; they shall also meet and confer prior to that conference in person or by telephone and be prepared to certify to the same, and shall be prepared to discuss their progress towards the resolution of this matter without the need for an evidentiary hearing or, in the alternative, the scheduling of a hearing and other necessary procedural deadlines, as well as any other issues that will assist in the prompt and efficient resolution of this matter, and it is further

ORDERED, that any counsel seeking to participate in this status conference must file a notice of appearance with the docket clerk of the Office of Administrative Hearings and send it to all other persons listed on the certificate of service to be received no later than _____, 2007. Any notice of appearance shall include the attorney's District of Columbia Bar number or shall conform to the requirements specified in OAH Rule 2838 (1 DCMR 2838) for attorneys who are not members of the District of Columbia Bar; and it is further

ORDERED, that all parties shall comply with all applicable rules set forth in the Title 1 of the District of Columbia Municipal Regulations (DCMR), Chapter 28.

June 19, 2007

_____/s/_____
Claudia Barber
Administrative Law Judge